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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	
Call Authentication Trust Anchor)	WC Docket No. 17-97
)	

Reply Comments of the Credit Union National Association

The Credit Union National Association (“CUNA”) respectfully submits these reply comments in the above-captioned proceedings. There is broad support in the record to delay implementing safe harbors for blocking calls based on SHAKEN/STIR information at least until that framework is more fully developed and accessible to all voice service providers. The record provides equally broad support for requiring a transparent, effective and fast challenge mechanism to reverse erroneous call blocking and coupling such a requirement with any safe harbor that may be authorized. A number of comments also agree with CUNA that fraud alerts and other time-sensitive financial calls be included in a centralized critical calls list. The Commission has no authority to block legal calls. It must therefore ensure that effective methods to avoid or remedy erroneous blocking are in place before authorizing safe harbors or vastly expanding the scope of call blocking programs.

I. Requests for Broad Safe Harbors Are Premature

CUNA's initial comments cautioned against establishing safe harbors based on SHAKEN/STIR information in light of the significant, ongoing work required to enable all voice service providers to utilize the framework and to ensure a positive consumer experience.¹ A significant number of comments agree that it is premature to create any safe harbors for blocking based on the failure of authentication or on the lack or level of authentication or attestation under the framework.² There is virtually no support in the record for blocking calls based solely on SHAKEN/STIR. The framework, as many comments note, is, and likely will remain for some time, an unreliable indicator of a call's legitimacy.³ Rather, parties claim that SHAKEN/STIR information should be an input along with other "reasonable analytics" to determine whether a call is likely to be "illegal" or "unwanted."⁴ Many of these parties then call for a broad safe harbor for voice service providers or other firms engaged in blocking based on these multiple inputs, including SHAKEN/STIR if available.⁵ The safe harbor being advanced by some would, for example, preclude liability for inadvertently blocking legitimate calls as part of the default

¹ Credit Union National Association Comments at 3. Unless otherwise noted, all comments cited herein are filed in these dockets pursuant to the Public Notice: Consumer and Governmental Affairs Bureau and Wireline Competition Bureau Announce Comment Dates for Call Blocking and Caller ID Information and Caller ID Authentication Third Further Notice of Proposed Rulemaking, DA 19-597 (June 26, 2019). The *Further Notice* proposed establishing a safe harbor for calls that "fail authentication" and asked whether more expansive safe harbors should be considered. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17- 97, FCC 19-51 (June 7, 2019) (*Declaratory Ruling or Further Notice*).

² See, e.g., Cloud Communications Alliance Comments at 5-8; INCOMPAS Comments at 7-8; Voice on the Net Coalition at 2

³ See, e.g., AT&T Comments at 5-6 ("SHAKEN/STIR is not a suitable tool for determining whether a call is illegal, much less unwanted."); First Orion Comments at 8-9 ("SHAKEN/STIR authentication results do not reliably correlate to illegal calls or any other metric that is directly relevant to call recipients."); USTelecom Comments at 6-7 ("Since the SHAKEN/STIR framework does not provide insight to the nature or content of a call (*i.e.*, whether a call is legal or illegal, legitimate or fraudulent, wanted or unwanted), it is an insufficient basis alone for voice providers to determine whether to block a call").

⁴ See, e.g., First Orion Comments at 9.

⁵ See, e.g., AT&T Comments at 11-15; CTIA Comments at 7; First Orion at 13; Sprint Comments at 2-3.

blocking based on a “reasonable analytics” regime recently authorized in the *Declaratory Ruling*.⁶

CUNA respectfully urges the Commission to refrain from adopting any safe harbors at this time, whether predicated on analytics, SHAKEN/STIR, or a combination of the two. As was pointed out in response to the draft *Declaratory Ruling*, the “reasonable analytics” being used to identify illegal or unwanted robocalls readily apply to legitimate and often critical calls.⁷ Parties have submitted substantial evidence that legitimate calls are being blocked using these types of analytics.⁸ Adding SHAKEN/STIR information may help reduce the incidence of erroneous blocking, but until that framework is more fully implemented, the lack of, or level of, attestation, or the failure to verify the call, provides little or no additional reliable information regarding the nature of the call. Commenters point to a wide variety of reasons why, at this early stage of implementation, a legitimate call may fail authentication or verification.⁹ The efficacy of “reasonable analytics” coupled with SHAKEN/STIR information to properly distinguish between legitimate calls or illicit robocalls is unproven. Safe harbors should at least await the results of studies the Commission directed several Bureaus to perform on the effectiveness of call blocking programs, including the extent of false positives.¹⁰

II. Robust Challenge Mechanisms Should Accompany Any Call Blocking Program

There is overwhelming support in the record to require call blocking programs to have in place a mechanism to promptly reverse erroneous call blocking, including coupling such a

⁶ See, e.g., CTIA Comments at 11.

⁷ Letter from Jonathan Thessin, Senior Counsel, American Bankers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos 02-278, 17-59, 18-152 & WC Docket 17-97 (filed May 31, 2019).

⁸ See, e.g., Sirius Comments at 4, n. 10 (compiling comments previously filed in this docket regarding blocked calls); Numeracle Comments at 2 (noting that Numeracle has provided the Commission with examples of critical calls being mislabeled).

⁹ See, e.g., RingCentral Comments at 6-7; Transexus Comments at 5-6; Telnix Comments at 1-2.

¹⁰ *Further Notice* at ¶¶ 87-90.

mechanism with any safe harbor.¹¹ CUNA respectfully urges the Commission to expand and codify the encouragement it gave to voice providers in the *Declaratory Ruling* to establish a point of contact and notify callers of blocked calls.¹² Although the Commission need not be overly prescriptive in establishing this requirement, it should set basic parameters. All blocking programs must, in addition to providing readily discoverable contact information, provide real-time notification of call blocking through an intercept message or unique SIP code.¹³ The challenge mechanisms should be transparent and contain a publicly-available commitment to resolve the issue within a certain time. No caller whose legitimate and often critical calls are being blocked should have to guess at what is happening to their calls or how to contact the blocking entity, and callers should be assured that upon providing reasonable evidence that it is a legitimate caller, the blocking will stop if not immediately then within a very short period of time. Finally, voice service providers should not be allowed to charge callers for invoking the challenge mechanism.¹⁴

III. The Commission Should Establish a Centralized Critical Calls List that Includes Fraud Alerts and other Vital, Time-Sensitive Financial Information

A number of parties joined CUNA in urging the Commission to include in any critical calls list fraud alerts and other messages imparting important, often time-sensitive financial information.¹⁵ Companies are often under a statutory or regulatory obligation to make such

¹¹ See, e.g., Joint Trades Comments at 5-6; INCOMPAS Comments at 8-9; NTCA Comments at 14-15.

¹² *Declaratory Ruling* at ¶ 38. See also *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9724-25, ¶ 54 (2017) (“2017 Call Blocking Order”) (“We encourage providers who block calls to establish a means for a caller whose number is blocked to contact the provider” and “to quickly resolve the matter.”)

¹³ NTCA Comments at 14-15.

¹⁴ See, e.g., ACA International Comments at 13; Capio Partners Comments at 4; Consumer Bankers Assoc. Comments at 3; Joint Trades Letter at 5-6. Providing free access to challenge mechanisms would be consistent with provisions of the Stopping Bad Robocalls Act, which recently passed the House by a vote of 429 to 3. See H.R. 3375, Stopping Bad Robocalls Act, 116th Cong. § 8(b) (2019) available at <https://www.congress.gov/bill/116th-congress/house-bill/3375/text> (last visited August 22, 2019).

¹⁵ CUNA Comments at 6-7; Electronic Transactions Association Comments at 2-3; Joint Trades Comments at 6-7.

calls.¹⁶ Blocking such calls has the potential to cause significant consumer harm, as the Commission recognized when exempting such calls from the consent requirements of the Telephone Consumer Protection Act.¹⁷

CUNA also concurs in the establishment of a single, centralized critical calls list operated or overseen by the Commission.¹⁸ The Commission is in the best position to determine which types of calls should be on the list and which entities should have access to the list.¹⁹ Requiring each voice service provider to maintain their own critical calls list would be impractical and increase the risk of a data breach. The Commission should immediately begin the process of establishing a critical calls list and develop effective and secure methods for companies to upload their outbound numbers used to make qualifying calls. The very real potential that critical calls will be blocked outweighs concerns that “bad actors” might gain access to these numbers for spoofing purposes so long as the highest possible level of security for the list is maintained.²⁰

Finally, CUNA reiterates its view that SHAKEN/STIR authentication should not be required in order to enjoy the protections against blocking afforded by the critical calls list, at least until that framework is fully implemented and tested.²¹ As discussed in CUNA’s initial comments, and in numerous other comments, critical aspects of the SHAKEN/STIR framework remain under development precluding the ability of many voice service providers from implementing the framework or obtaining a full attestation.²² Critical calls initiated on their

¹⁶ See, e.g., Joint Trades Comments at 7-8 (noting federal and/or state notification requirements related to data breaches and mortgage servicing.)

¹⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8023 ¶¶ 127-133 (2015), sub. history omitted.

¹⁸ See, e.g., App. Assoc. Comments at 6; NCTA Comments at 11; TNS Comments at 10.

¹⁹ See, e.g., TNS Comments at 11-12.

²⁰ See e.g., Larimer Emergency Telephone Authority (LETA) Comments at 3-4.

²¹ CUNA Comments at 7-8. See also INCOMPAS Comments at 12; LETA Comments at 4; NCTA Comments at 11-12.

²² CUNA Comments at 2-4. See also, ACA Connects Comments at 4; Cloud Communications Alliance Comments at 5-8; INCOMPAS Comments at 4; Telnyx Comments at 2; RingCentral Comments at 6; Von Comments at 2.

networks should not be blocked simply because they have been unable, either through lack of resources or the nature of their calling platforms, to implement SHAKEN/STIR.

IV. The Commission Has No Authority to Authorize Blocking of Legal Calls

CUNA explained in its initial comments that the Commission is without authority to authorize voice service providers to engage in provider-initiated blocking of legal calls.²³ Few other comments addressed this issue. One that did, AT&T, argues that the Commission has authority under sections 201 and 202 of the Communications Act to establish a broad safe harbor to protect from liability service provider initiated inadvertent blocking of legal calls based on various analytics and implementation of SHAKEN/STIR.²⁴

AT&T's arguments notwithstanding, there is no precedent for authorizing the broad-based blocking of calls that the company envisions. It cites the *2017 Call Blocking Order* for the proposition that “the blocking of certain robocalls is ‘not, by definition, an unjust or unreasonable practice or unjustly or unreasonably discriminatory.’”²⁵ That order, however, authorized extremely limited blocking and only “in well-defined circumstances.”²⁶ It provides no precedent for authorizing provider-originated blocking using a combination of vaguely defined reasonable analytics whose metrics, such as call volume or short call duration, apply equally to

²³ CUNA Comments at 10-12.

²⁴ AT&T Comments at 15-18.

²⁵ AT&T Comments at 16 (quoting *2017 Call Blocking Order* ¶ 60).

²⁶ *2017 Call Blocking Order* at ¶ 9 (authorizing provider-initiated blocking of numbers that are only used for inbound calling and placed on a Do Not Originate list, or numbers that were invalid or had not been allocated or authorized for use).

legal calls and/or a call authentication framework that virtually all commenters agree is not a reliable indicator of whether a call is legal or illegal.

AT&T's reliance on the Commission's citation to sections 201(b) in the *Declaratory Ruling* to justify blocking of calls on an opt-out basis is also inapposite.²⁷ Although legally questionable, the Commission there relied on the presence of consumer choice based on full disclosure to justify blocking, which is distinct from provider-initiated blocking accomplished at the network level with no consumer involvement or consent.²⁸ Finally, despite emphasizing the need for protection to block legal calls, AT&T cites to a 2001 blocking order in which the Commission permitted blocking of essentially illegal calls destined to a "sham entity" solely for the purpose of extracting unlawful payments.²⁹ The *2001 Blocking Order*, however, provides no basis to block a caller from initiating a lawful call.

The lack of authority to block legal calls requires the Commission to establish highly robust and effective methods to ensure that such calls are not blocked in the first instance, for example by creating a reasonably broad, but workable, critical calls list, and by requiring blockers to unblock legal calls within the shortest possible time frame. Authorizing broad safe harbors before these methods are implemented would exceed the Commission's authority.

CONCLUSION

For the reasons set forth above, CUNA respectfully urges the Commission to delay the creation of any safe harbors and to require call blocking programs to have in place transparent, effective, fast and free mechanisms to reverse erroneous blocking of legitimate calls. These

²⁷ AT&T Comments at 17.

²⁸ *Declaratory Ruling* at ¶ 22 (stating that "there appears to be no legal dispute in the record that the Communications Act or Commission rules do not limit consumers' right to block calls, as long as the consumer makes the choice to do so.").

²⁹ AT&T Comments at 17 (citing *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company Inc. v. AT&T Corp.* Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001) (*2001 Blocking Order*)).

mechanisms are necessary because the Commission lacks authority to authorize the blocking of legal calls. Finally, the Commission should move expeditiously to establish a centralized critical calls list that includes numbers used to disseminate fraud alerts or other time-sensitive financial information.

Respectfully submitted,

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